# Petition

81-2076

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NO._____

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IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1982

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HENRY J. KALITA,

PETITIONER

V.

SECRETARY OF TREASURY,
COMMISSIONER OF INTERNAL
REVENUE,

RESPONDENT

---

ON WRIT of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

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# PETITION FOR A WRIT OF CERTIORARI

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Without Counsel

## QUESTION'S PRESENTED

(A) Can the Appelate Court deny Henry J. Kalita, one or more Constitutionally protected Rights, without Due Process of Law, by refusing to address itself to Petitioner's challenge to Jurisdiction of the Internal Revenue Service, at the Administrative Level.

(B) The challenge to the Jurisdiction of the District Court to hear the Willfull Failure to file case, which Adjudicated at the Administrative Level of the Internal Revenue Service and which only the Appelate Court, according to law, can review and issue and Enforcement Order.

(C)Can the Appelate Court or the District Court refuse to adress itself to a Jurisdictional challenge, once raised, whose refusal to do so , is contrary to stated LAW.

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HENRY J KALITA,
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V.

SECRETARY OF TREASURY
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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT .

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MAY IT PLEASE THE COURT;

Comes Henry J. Kalita (without counsel) Pursuant to Part V of the Rules of the Supreme Court for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, to review the order of the United States Court of Appeals for the Seventh Circuit, Entered in this proceeding on Dec. 23 1981. (Appendix-a-).

Petition for Rehearing denied on Feb, 2nd 1981. Appendix-b. Petition for Hearing In Banc Denied on Feb 2, 1982. (Appendix -c-)

Questions Presented Are;

(a) Can the Appelate Court deny Henry J. Kalita, one or more Constitutionally protected Rights, which is a violation of Petitioners Due PRocess of Law, the Circuit Court's refusal to adress itself to Petitioners challenge to Jurisdiction of the Internal Revenue Service at the Administrative level.

(b) The challenge to the Jurisdiction of the District Court to hear, the willfull failure to file case,which was Adjudicated at the Administrative Level of the Internal Revenue Service and which only the Appelate Court, according to law (FRAP Rule 15-a-b-). can review and or issue an enforcement order, to make I.R.S. Order valid.

(c) Can the Appelate Court or the District Court refuse to adress itself to a Jurisdictional challenge, once raised, whose refusal to do so, is contrary to stated LAW.

(d) The parties to this proceedings are those contained in the caption of the case in this court, namely:

Henry J. Kalita-- Petitioner

Secretary of Treasury

Commissioner of Internal

Revenue Service.--------- Respondent.

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(F) JURISDICTION

This Court has Jurisdiction to entertain a Petition for Writ of Certiorari in this case, pursuant to Title 28 USC, Section 254 (1) (3). Petition for Writ of CERTIORARI is timely pursuant to 28 USC- 2101, (b) (c), 28 USC 2106.

(G)DISMISSAL BY APPELATE COURT

This case was first heard and dismissed by the United States Court of Appeals for the Seventh Circuit by Chief Judge Walter J. Cummings, and Circuit Judge Wilbur F. Pell Jr. and Richard D. Cudhay, on Dec 23, 1981, case No. 81- 2958, ALL RELIEF WAS DENIED,the Court did not adress itself to any of the Law or Facts presented to It. (Appendix-A-).

(H) Petition for Rehearingand Written Finding of Facts and Conclusion of Law, were denied Petitioner (Henry J. Kalita) on February 2, 1982.

Petition for Hearing In Banc, was also denied on February 2, 1982. when Court Stated "It is further ordered that this Petition is hereby Dismissed".Appendix B ). There was no Signature of an kind on the dismissal order, nor was their any Court stamp.

(I) CONSTITUTIONAL PROVISIONS, STATUES, AND RULES.

Constitution of the United StatesArticle VI

"Judicial Officers, both of the United States and of the Several States, shall be bound by oath or affirmation, to support this Constitution.

5th Amendment to the United States Constitution.

"Nor be deprived of Life, Liberty, or Property, without due process of law; nor shall private Property be taken for public use without just compensation.

The Constitutional right of due process of law absolutely requires a substantial hearing, adapted to the nature of the case, and where the person proceededagainst has an opportunity to be heard, and to defend and enforce his rights. Staurt v. Palmer 74 N.Y.183.

The requirement of an adequate hearing under due process clause of the Fifth Amendment applies to quasi-judicial proceedings of administrative agencies. Phila. Co. v. S.E.C. , 175 F2d 808.

Title 5 USCS- Administrative Procedure Act. (APA) Administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action. Administrative law is not the substantive law created by the agencies, and it is not the substantive law created by legislative bodies or courts and administered by the Agencies.

Administrative law is derived from:

(a) Constitutions, (i) State (ii) Federal

(b) Statues, (c) Common Law, and (d) rules regulations and orders of administrative agencies themselves.

The Constitution of the United States, the Administrative Procedure Act (APA) and court decisions impose certain procedural require-ments on that agency which it must follow while administering the Act.

The Treasury Department is clearly an agency. So is the Internal Revenue Service.

Administrative Law Treatsie. Kenneth Culp Davis. (1979)

Rules-15-16-17-18-. FRAP

REVEIW OR ENFORCEMENT OF AGENCY ORDERS-HOW OBTAINED; (a) Petition for Reveiw of Order; "Review of an order of an administrative agency, shall be obtained by filing with the clerk of a court of appeals which is authorized to review such order, within the time prescribed by law, (No time

limit , on Jurisdictional challenge) to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statue(hereinafter, the term "petition for review" shall include a petition to enjoin, set aside, suspend, modify or otherwise review, or a notice of appeal). The Petition shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. In each case the agency shall be named respondent. (b) Application for Enforcement of Order; Answer; Default;

An application for enforcement of an order of an agency shall be filed with the clerk of a court of appeals which is authorized to enforce the order. The application shall contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief prayed. Within 20 days after the appli-

cation is filed, the respondent shall serve on the petitioner and file with the clerk an answer to the application. If the respondent fails to file an answer within such time, judgement will be awarded for the relief prayed. (Petitioner never received an response from, the Secretary of Treasury, or the Commissioner of the I.R.S.)

F.R.A.P. Rule- 16. THE RECORD ON REVIEW OR ENFORCEMENT (a) Composition of the record. The order sought to be reviewed or enforced, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review or enforce the order of an agency.

F.R.A.P. Rule-17. FILING OF THE RECORD (a) Agency to File: Time for Filing; The agency shall file the record with the clerk of the court of appeals within 40 days after service upon it of the petition for review unless a different time is provi-

ded by the statue authorizing review.(Petitioner never received any response from the Agency or the Court of Appeals, of any filing by the Agency). See Appendix-D-E-F-

F.R.A.P. Rule 18. STAY PENDING REVIEW Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency.(See Appendix-E-).

F.R.A.P. Rule 22, also 28 USC 2255. HABEAS CORPUS PROCEEDINGS. (See Appendix-C-C1-C2-), Also see Appendix-G-. Habeas Corpus was filed with the Seventh Circuit Court, because proceedings were instituted in this Court, for Judicial Review of administrative agencys, Jurisdiction and for review of all proceedings. Appendix-G- was to notify District Court and U.S. Attorney, as to proceedings at the Appelate Court level.

## STATEMENT OF THE CASE

ON or about March 17, 1981, the Grand Jury returned an indictment for failure to file an income tax return for years 1975 through 1978, against Appelant in this case, HENRY J. KALITA. The government's case in District Court was 81-CR - 127.The Appeals Court case was 81- 2958, challenging the Jurisdiction of the I.R.S., AT THE ADMINISTRATIVE level. During the proceedings of the trial in the District Court 81-CR- 127, the named Defendant became aware of the Administrative Procedure Act 5 U.S.C.S. which governs the Procedures of all Administrative Agencys. (Including the I.R.S.)

Said Plantiff then filed (by mailing) a copy of Administrative Law Brief-(Appendix 1) and Verified Demand to the U.S. Attorney General, Secretary of Treasury, Commissioner of Internal Revenue and District Director of I.R.S of Illinois, which was received by above parties on June 30, 1981.(Certified mail return receipt).

DISTRICT DIRECTOR for the Sectrerary of Treasury. (2pages) Copies hand delivered to U.S. Attorney, Seventh Circuit Court, and Judge Thomas R. McMILLEN, Seventh District Court.

(2) Filed Motion for stay of Administrative Order to Seventh Circuit Court. (Copies to all above parties. (Appendix-E-).

(3) Notice of Special Emergency Filing TO Expedite Answer, etc.,(Appendix-F-), to Cheif Judge, Thomas E. Fairchild, Seventh Circuit Court and all all other Judges of the Seventh Circuit Court.

(4) Demand for Habeas Corpus Releif (28 USCS 2255) in preparation for Judicial Review Appendix-G-).

(5) Response of Seventh Circuit Court issued on December 23 1981, by Walter J. Cummings Chief Judge, Wilbur F. Pell Jr, and RICHARD D. Cudahy, circuit court Judges. the same day on which Petitioners trial was finished in the District Court. (all relief denied). (Appendix-A-).

(6) Petition for Judicial Review of Administrative Agency. (Appendix-A-).

(7) On January 8, 1982, filed a Petition for Rehearing, with Order Granting Motion to Enlarge Period to Act, with Affadavit. Appendix -J-).

(8) Clarification of order, Finding of Facts and Conclusion of Law, and Review of Orders of Administrative Agency to prove Jurisdiction pursuant to F.R.A.P. Rule 15 (a) and (b), also 5 U.S.C.S. 101, 701 to 706.(APPENDIX-K-).

(a) Motion to Waive 15 page Limit on Petition for Rehearing. Appendix-L-).

(b) Petition for Hearing En Banc.(Appendix M).

ARGUMENT-I-A-

(A) Can the Appelate Court deny Henry J. Kalita One or more Constitutionally protected Rights, By the denial of Due Process of Law, and by refusing to adress itself to Petitioner's challenge to Jurisdiction of the I R S at the Administrative Level ?

5 USCS 556 (d) provides Jurisdiction must be proven as matter of evidence: "Except as otherwise provided by statue, the proponent of a rule or order has the burden of proof... a party is entitled to present his case or defense by oral or documentary evidence.. rebuttal evidence.."

Summary: 5 USCS 554 (b) (2) Authority and Jurisdiction for hearing required.

5 USCS 558 (b) No sanction, rule or order without Jurisdiction.

5 USCS 558 (d) Proponent of rule or order has Burden OF Proof of Jurisdiction

Jurisdiction or Authority of an Adminstrative agency to make an orderis a question of law, which a court must consider, at least if it is properly raised, in a proceeding to enforce the order.

Crowell v. Benson, 285 us 22, Perkins v. Endicott Johnson Corp., 128 F2d 208, affd 317 US 501.

Vesting in an administrative agency exclusive initial power to determine whether it has jurisdiction in a particular case is not a violation of Constitutional Rights where there is a provision for adequate judicial review.

Meyers v. Bethlehem Shipbuilding Corp.
303 US 41.

28 USC 2072 rules prescribe by Supreme Court as authorized by Congress for "review in the court of appeals*** for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers. Such rules shall not abridge, enlarge or modify any substantive rights***
28 USC 2112. Record on review and enforcement of agency orders, "in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise." (c) The agency, board, commission, or officer concerned may transmit to the courtof appeals the original papers comprising the whole or any part of the

record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted.

Jurisdiction: An agency cannnot "boot strap" itself into an area in which it has no Jurisdiction, US v. Seatrain, 93 S CT 1773, 411 US 726, 36 LED2 620, (1973) and particulary where jurisdiction is challenged by rasing question of Jurisdictional facts (NY v. US, 337 F Supp, 150, 344 F Supp 929 1972. "Only function of courts is exercise of right to enforce or review orders of agency." See Massachusetts Universalist Convention v. Hildreth and Rodgers Co. 183 F2d 497. Also see 5 USC 706, wherein it is stated that the court shall take due account of the rule of prejudicial error in making its determinations. A Court will not enforce an administrative order or award, made without due process of law.

See National Labor Relations Board v. Newberry Lumber and Chemical Co.123 F2d 831 The requirement of an adequate hearing under due process clause of Fifth Amendment applies to quasi-judicial proceedings of Adminiatrative agencies. Phila. CO. v. S.E.C., 175 F2d 808. "The Court of Appeals is not concerned with the reason why Congress has in some instances vested in the district court original jurisdiction to review orders of administrative bodies and why in others it has lodged such power in the circuit court of appeals. the essential fact is that it has seen fit to do so. The rank of the court is not impoetant." Natural Gas Pipeline Co. of America v. Federal Power Commission, 128 F2d 481.See FRAP Rule 15. "And the agency must itself give sufficient indication of the grounds for its exercise of power or discretion so that the reviewing court can appraise that determination under appropiate standards of review"

Matlovich v. US , 591 F2d 852, (1978).
The agency cannot indulge in unrestrained and fanciful flights of constructional imagination to arrive at artful but artificially consistent interpretations.( CSPC v. US, 600F2d 844 (1979), the whole record, not just the record in favor of the government, must be considered. Shaw v. Cdlebrezze, 245 F Supp 572; and as to adjudicatory FACTS, REVIEW ON ENFORCEMENT IS LIMITED TO RECORD and does not merit.de novo trial. Littel v. US 369 F Supp 411, affd 519 F2d 1399 (1974 ); (p. 3 )
5 USC 706 provides JUDICIAL REVIEW of agency decisions. Reviewing court must decide all relevant questions of law, interpret CONSTI_ TUTIONALand statutory provisions, and determine the meaning or applicability of the terms of an agency action (includes IRS and all government agencies). Court can; (1) find agency delay in giving data unlawful (see 5USC 555) (2) hold unlawful and

set aside agency actions finding conclusions to be;

a. Arbitrary, capricious, abuse of discretion or otherwise violates law.

b. Contrary to Constitutional rights, power privelege, or immunity.

c. In excess of statutory jurisdiction, authorithy or limitation.

d. without observance procedure required by law.

e. Unsupported by substantial evidence in case subject to 5 USC 556, 557.

"Moving PARTY is entitled to Judgement as a matter of law". See e.g. Sartor v. Arkansas Natural Gas Corp., 321 US 620, 64 S CT 724. The U.S. Attorney General, Secretary of Treasury, Commissioner of Internal Revenue and the District Director of Internal Revenue Servive have all failed to respond to any and all material directed to them, thereby their silence, on the basis of the Pleadings & Affadavits filed by Appelant, indicates there is no dispute

as to the genuine issue of any material Fact presented. See FRAP Rule 56 Summary Judgement.

Appelate Court erred in that it should have called for Judicial Review, pursuant to 5 USC 101, 701 to 706, of all Administrative Records involved in this case, pursuant to FRAP Rule 15-16-17-&18. Review or Enforcement of Agency Orders- or in the alternative, granted Summary Judgement.

B The challenge to the Juricdiction of the District Court to hear Willful Failure to File Case, previously adjudicated at the Administrative Level of the INTERNAL REVEnue Service, which only the Appelate Court, according to law can review and issue an Enforcement Order, thus making the Internal Revenue Service Order enforceable. FRAP Rule 15 to 18.

The challenge to the Jurisdiction of the Dictrict Court, and challenge to the standing of the IRS, mustbe addressed once the

Issue has been squarley raised.

"It was the duty of the District Court to ascertain whether it has Jurisdiction before proceeding, to hear and decide the case on the merits." Federal Rules of Civil procedure, Rule 12 (h), 28 USC (a), Battalgia v. General Motors Corp., 169 F. 2d 254, Cert. Den. 69 S.Ct.236. If Jurisdiction is lacking, Federal district Court has a mandatory duty to Dismiss Petition on Defendant's Motion, Judicial Code, SECtion 37, Emmons v. Smith, 149 F 2d 869, Cert. Den, 66 S Ct. 59, 326 U.S. 746. "Courts thusly have no authorithy to make factual this record of the administrative agency,. Missouri v. Coleman,247 F Supp. 1252 Vac/Dem., 564 F.R.D. 600, (1977). The Administrative Procedures Act (APA) does not create new law nor new remedies nor new substative rights-- but are merely Declaratory of the Substantive Common Law on the subject (ADPSO V. Camp, 279 F Supp

675, Affd, 406 F2d 837, rev. o.q. 90 S CT 827, 397 US 150, 25 LEd 2 184, (1968). NSPC v. U.S., 248 F Supp 616, (1965). Olin v. u.s, 72 F Supp 225 (1947). there being no general Federal Common Law. (Erie RRv. Tompkins, 304 US 64 (1938).

"This power shall be exclusive, and shall not be affected by other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. The grant of that exclusive power is constitutional because the act provided for appropiate procedures before the Board and in the review by the Circuit Court of Appeals an adequate opportunity to secure judicial protection against possible illegal action on the part of Board. No power to enforce an order is conferred upon the Board. To secure enforcement, the board must apply to a Circuit Court of Appeals for itsaffirmance. And until the Board's order has been affirmed

by the Appropiate Circuit Court of Appeals no penalty accures for disobeying it." .. (p48) "Since the procedure before the board is appropiate and the Judicial review so provided is adequate, Congress had power to vest exclusive Jurisdiction in the Board and the Circuit Court of Appeals... (p50). Myers v. Bethlehem Shipbuilding Corporation, 1938, 303 US 41. "Courts thusly have no authorithy to make factual this record in place of that appearing on the record of the Administrative Agency, Missouri v. Coleman,247 F Supp. 1252 Vac/ dem., 564 F.R.D. 600 (1977).

(C) Can the Appelate Court and the District refuse to adress itself to a Jurisdictional challenge,(I.R.S. does not have standing in the District Court, Only Appelate Court can review or grant an enforcement order) FRAP Rule 15 to 18. once raised, which is contrary to stated law, without first resolving that Jurisdictional issue.

Jurisdiction, in criminal cases, is never conferred by implication and cannot be enlarged by any mere "inferences" from the law or by doubtful construction of its terms. U.S. v. Bink, 74 F. Supp. 603).Long ago, in the early 1800's, one of our foremost Chief Justices wrote: "... the power to determine it (Jurisdiction) MUST be given by written law." Chief Justice Marshall. USCA--- Revisors Note for sec. 3231 of title 18 USC says: "This section

was formed by combining sections 546 and 547 of Title 18 USC, 1940 ed., with sec. 558 (d) of said TITLE 12, WITH NO CHANGE IN SUBSTANCE." the substance of 18 USC 546 1940 ed, was as follows: "The crimes and offenses defined in This Title (18) shall be cognizable in the District Court of the United States ..." 18 USC 3231 applies ONLY TO CRIMES DEFINED IN TITLE 18 of the USC and not to "crimes" defined

In 26 USC 7203 "criminal action" there must be a Judicial enforceing order by the proper court following Judicial Review of the Administrative quasi- judicial proceedings as prescribed in 5 USC 101-706. If the respondent is sent to jail, he is "sent for contempt of the Court's Order. Judicial Control of Administrative Action, Louis Jaffe, Little Brown Co. 1965, K.C. Davis Adm. Law Treatises, and Schwartz, etc. Every United States Court must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States, Jecker v. Montgomery, 13 How 582. "the intent of the legislators constitutes the law." Stewart v. Kahn 78 US 493. "O nce challenged as to jurisdiction, the person which Asserts jurisdiction must assume burden of Proving same." Thomson v. Gaskiel, 62 S CT 673, Also see: Basso v. U.P.L., 495 F2d 906. When jurisdiction is taken, assumed or usurped by miscon-

struction of statue, common law or Constitution, by the weight of authorithy, the judgement, decree, or final determination is wholly void. 14 M.A.L. 16. Whether or not the want of jurisdiction is made to appear by good and orderly pleading and proof, if it does appear, the court must accordingly; "A hundred years ago it was announced that when an objection to jurisdiction has been made, or may be made, in any cause, in an inferior or Appelate Court of the United states, it must be considered and decided before any court can move one further step in the cause; as any movement is necessarily the exercise of Jurisdiction." That rule, not having been modified, is as effective today as it was then" Crater Lake Nat. Park Co.v. Oregon liquor Control Commission, 26 F Supp 363. Since Rule 12 (h) provides for dismissal whenever want of jurisdiction of subject matter appears to the court by

suggestion or otherwise. (Judge Thomas R McMillen dismissed all of the motions filed by the defendant, challenging jurisdiction of the I.R.S. and the District Court to hear the case, because motions were filed by the defendant and not by his Co- Counsel District Court was given copy of all motions filed at the appelate court level. Please all appendix's have stamp of District Court (Judge Thomas R. McMillen) and U.S. Attorney's office.(See transcript of Dec 15, 1981, Judge Thomas R. McMillen Presiding) pages 6-9 pages 11and 12. My Co-Counsel Michael Parham was to busy to file the motions filed by me, also he was not familiar with 5 USC APA. page(2 of transcript). He did not make a proper argument for the record, because he did not fully understand what took place. No permission was needed for leave to appeal, because stay of all proceedings and Judicial Review of all Administrative Proceedings was properly before

the Appelate Court, which by law is the only Court allowed to Reveiw or Enforce Administrative, orders rules, or decisions. FRAP Rule 15 to 18.It has always been the duty of a federal court, on motion or suggestion of a party or on its own motion, to see that it has jurisdiction of the subject matter of an action, and to raise the question itself, since consent of the parties cannot give such jurisdiction. KVOS v. Associated Press, 299 US 269. Rule 12 h 3 states that the court "SHALL dismiss the action whenever lack of jurisdiction of the subject matter appears.Duty of the Court to inquire as to its jurisdiction of the subject matter was affirmed by former 28 USC 80.Under statue court had duty to notice its lack of federal jurisdiction sua sponte.Woerter v. Orr 127 F 2d 969.Courts can exercise no jurisdiction not conferred upon them by Legislative enactment. Ladew v. Ten. Copper Co., 218 US 357.

Acourt which lacks jurisdiction of the subject matter has no power and, as a general rule, an objection on this score may be raised at any time. If it appears from the record, even though that fact was not called to the attention of the trial court it may be raised for the first time upon review, as the Appelate Court can have no Jurisdiction if the trial court has none. "Jurisdictional point as to whether proceeding involves justifiable question under Constitution Art III may be raised at any time, including on review by the SUpreme Court for the first time." McGrath v. Kristensen, 340 US 162. Acourt does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authorithy granted to it by its creators. The court may, and under some circumstances should, on its own motion, dismiss a case for lack of jurisdiction of the subject matter. Hackner v. Guaranty

Trust Co. of New YORK, 117 F2d KNICKER-bocker Ice CO. v. Hofstatter, 32 F2d 184; Giesecke v. Denver Tramway Corp. 81 FSupp 957. INevery judicial proceeding there are one or more facts which are strictly jurisdictional, in the abscence of which the judgement is a mere nullity, void whenever and however challenged, 14 M.A.L. 117. When a particular fact (jurisdiction) is the necessary Constitutional basis for the exercise of a power, the Reviewing Court, inaddition to Reveiwing any Question of law involved, must also itself make a finding of the existance of the fact. In addition to considering the record of proceeding had before the Administrative body, the court may, in its discretion, receive additional evidence as to the existance of such facts. In other words, certain facts are "KINGPIN" facts in administrative action. Without their presence the administrative

agency has no Constitutional Power to act and the administrative order will be held void when subsequently challenged in court. Without the presence of this vital "KING PIN" fact, the entire administrative proceeding collapses. A jurisdictional fact is one whose presence gives a court or administrative agency power to act. Its existance is a condition precedent to the exercise of power. Hence it can never be waived or dispensed with. Subsequent discovery that this essential type of fact was missing will nullify and destroy the order or judgement involved.
Administrative Law Paul r Conway page 79.
Where the jurisdiction of an administrative agency to act depends upon the existance of one or more basic facts, in the absence of which its purported order will be void, a litigent has a Constitutional Right to have the agency's finding of Jurisdiction reviewed by a Court of law. Ng Fung Ho v.

White, 259 US 276 (1922) Fifth amendment guarantees judiciary proceedings to insure due process of law (p 284, Brandeis, J) A Constitutional Fact is one which is required by the Federal Constitution to exist before the totality of facts will support the administrative order, no matter how persuasive the other facts in the case may be. Unless such fact or facts are established in the administrative proceedings, showing compliance with certain basic requirements of the Constitution, the proceeding is fatally defective and cannot survive Judicial scrutiny. Ohio Valley Water Co v. Ben Avon Borough, 1920, 253 US 287. There are two jurisdictional defects at the Administrative level of the I.R.S.

(1) The I.R.S. failed to respond to its jurisdictional challenge.

(2) It failed to file in the Appelate Court for an enforcement order, on all of its decisions, in order to make its orders valid according to law.

Where Jurisdictional facts are raised the Court can not Summarily, support acts of agency, New York v. U.S., 377 F Supp. 150 344 FSupp. 929. Findings of fact which run to Jurisdiction, found by an agency, are not conclusive on Courts, Cox v. U.S., 157 F2d 787, Affd., 352 U.S. 442, 333 U.S.830, Utah Mining v. U.S., 339 F2d 506, Affd/Rev. In part 884 U.S., 394; Nor where unsanctioned by law or in conflict with Judicial Decisions, U.S. v. Alkai, 86 FSupp. 59, FRAP Rule 15, provides for Review and or Enforcement of orders of Administrative agency's orders. To completely ignore the above is a denial of Due Process of law. (no acess to court). In determing whether such Rights were denied, we are governed by the Substance and not by mere form. Louisville & N.R. Company v. Schmidt, 177 U.S. 230, 20 S Ct. 620, 44 LEd 747. Functions of Courts is exercise of rights to Enforce or Reveiw Orders of an Agency, Massachuetts

Universalist Convention v. Hildreta & Rodgers, 183F2d 497,also A.PA. 5USC 206.

CONCLUSION

The Appelant filed all the Motions referred to in the two Dismissal Orders of Dec. 23 1981, and Feb. 2, 1982, issued from the Seventh Circuit Court, after waiting for the mandated reply from the Administrative Agency of the I.R.S., which never came. An Administrative Demand pursuant to 5USC was filed on June 30, 1981, with the U.S. Attorney General, Secretary of Treasury, Commissioner of I.R.S., &the District DIRECTOR of the I.R.S. at Chicago Illinois, challenging the Jurisdiction of the I.R.S. AND Asking for Responsive, Response to this. The petitioned Agencies filed no response whatsoever. **APA**-5USC States that the Administrstive Agency (I.R.S.) must respond, timely, materially, substantively, and in writing. (5USC 555, 556 (d).

On Dec. 11, 1981, I filed an Application For Stay of Administrative Order Pending Review, pursuant to 5USC 705, with the I.R.S. with copies served on all parties involved.(See copies of all appendics filed, at District & Appelate level). Also, Motion For Stay of Administrative Order with the Court of Appeals, and a Petition for Judicial Review of Administrstive, orders, rules and decisions. (The full Petitions and Motions are not included here, but are referred to here only to define my posotion in this matter) There are approximately 200 pages of documented Law & Facts which were filed with the Seventh Circuit Court of Appeals, which said Court Totally Ignored& Dismissed. I Beleive that by its action, the Appelate court has unlawfully denied me acess to that Court. As a Soveirgn Citizen Standing at Common Law, With Substantive issues, in accordance with my Constitutional issues, Imust be Granted Relief.

Can the Appelate Court, Sanction, the complete disregard of all laws rules regulations,and Statues by the I.R.S. Which APA 5USC STATES they are bound by. Can the Appelate Court be a party to this Action.

Having spent hundreds of hours, in researching, costs of typing, costs of reproduction,which runs into the Thousands of dollarsand have the Appelate COurt fail to adress itself to any/all issues presented to it, which involve Substantive Rights of the Appelant, is an assult on our system of Justice.

I believe that every Soverign Citizen of these United States is entitled by Law to his day in Court, which must include, presenting any/all evidence in his behalf, whether Plantiff or Defendant for the Purpose of Having Adjudicated, in a proper Court of Law, with a Responsive, Response based on the Facts and the Law Applicable for granting or dismissing said action.

I Beleive this Court will agree, that anything less than this, should not be accepted by any Court, whose SWORN Dutyit is to see that Justice is rendered, equally to Everyone, Especially where the United States is involved. It is to set an example for its Citizens to follow.

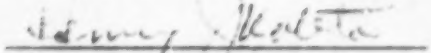
For the foregoing reasons, with prayer for Preservation and Extension of God Given and Constitutionally protected Rights, to personal Dignity and Security, Henry J. Kalita, Appelant Petitioner, respectfully asks this Supreme Court of the United States, to Remand this case to the Appelate Court of the Seventh Circuit,with orders to have the I.R.S. bring up all of its Records for Judicial Review, pursuant to, FRAP Rule 15 to 18. or in the Alternative Dismiss all charges brought by the I.R.S. In the Seventh District Court because it has no standing.

The Supreme Court has stated that Pro Se complaints are held "to less stringent standards than formal pleadings by lawyers" and regardless of who represents the defendants, a Motion to Dismiss is not to be granted unless it appears beyond doubt that the defendants can prove no set of facts in support of their claim with which would entitle them to relief". Haines v.Kerner (1972), 404 U.S. 519, 30 Led 2d 652, 92 Sct. 594, 596, Reh. Den., 405 U.S. 948, 30 Led 2d 819, 92 SCt 963.

Rights of the Appelant in this case can only be protected by this Court Issuing a Writ of Certiorari, stating the Appelant has an absolute right to Judicial Review of all Administrative Orders, Rulings, Decisions, Adjudications, which must be review , before an Enforcement Order can be issued, to make valid. Jurisdiction of the I.R.S. having been challenged, Administrstive Proceedings do not have to be

exhausted and can be challenged at any time. ( no time limit on challenge to Jurisdiction.

Respectfully submitted



Henry J. Kalita
131 So. Milwaukee Ave
Wheeling, Illinois 60090

STATE OF ILLINOIS )
COUNTY OF COOK ) SS.,

AFFIDAVIT

I, HENRY J. KALITA, being duly sworn, upon oath, do depose and say;

1. That I am the Appelant in the foregoing brief, and I do subscribe to the foregoing statements, facts and Law.

2. That the statements , facts, and Law in the foregoing, are true and correct to the best of my knowledge.

Henry J. Kalita
HENRY J. KALITA

SUBSCRIBED and SWORN to before me this 26th day of April 1982.

[illegible]
Notary Public

My commission expires 6/26/84

CERTIFICATE OF SERVICE

I, Henry J. Kalita, being duly sworn upon Oath, do depose and say, That on MAY 1st 1982, I did serve upon parties listed, by Certified Mail, return receipt requested, on the following:

William F. Smith; U.S. Attorney General

Donald T Regan, U.S. Sec. of Treasury.

Roscoe J. Egger, Commissioner of I.R.S.

District Director of I.R.S.

Chicago , ILLINOIS.

Further Affiant sayeth not.

Henry J. Kalita

Henry J. Kalita
Without Counsel
131 So. Milwaukee Ave.
Wheeling, Ill. 60090
(312) 537 7255

State of Illinois
County of Cook

Sworn and subscribed before me this

of April, 1982.

Carl R. Lindstrom
Notary Public

My Commission Expires 2/6/86

Affidavit of Mailing Certificate

I, Henry J. Kalita, being duly sworn upon Oath do depose and say that on MAY 1st 1982, I did send (40) corrected copies for "Petition of Writ for Certiorari" To the SUPREME Court of the United States, by Federal Express. (Original petition was sent in on April 1st 1982).

Further Affiant sayeth not.

Respectfully submitted

Henry J. Kalita

Without Counsel

131 S.Milwaukee Ave

Wheeling, Ill 60090

(312)537 7255

State of Illinois

County of Cook

Sworn and subscribed before me this day April, 1982.

Carl R. Lindstrom

Notary Public

My Commission Expires 2/6/86

# Appendix

81-2076

Office - Supreme Court, U.S.
FILED
MAY 4 1982
ALEXANDER L. STEVAS.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1982

NO_____

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HENRY J. KALITA,

PETITIONER

V.

SECRETARY OF TREASURY
COMMISSIONER OF INTERNAL
REVENUE.

RESPONDENT

---

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

---

APPENDIX FOR CASE NO 81- 2958

DECIDED IN THE SEVENTH CIRCUIT COURT

OF APPEALS, FINAL DECISION ON FEB2, 1982

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HENRY J. KALITA
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Without Counsel

APPENDIX "A"

No.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago Illinois, 60604

December 23, 1981

BEFORE

Hon. Walter J.Cummings, Chief Judge
Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Richard D. Cudhay, Circuit Judge.

| | | |
|---|---|---|
| Henry J. Kalita Petitioner, | ) | Petition for Review of an Order of the Internal Revenue Service. |
| No. 81-2958 | VS.) | |
| Internal Revenue Service, Respondent. | ) | |

This matter comes before the court for its consideration upon the following documents:

1) "MOTION FOR STAY OF ADMINISTRATIVE ORDER" filed herein on December 14, 1981 by pro se petitioner Henry J. Kalita.

2) "EMERGENCY DEMAND FOR Habeas Corpus RELEASE (28 USC 2255) IN PREPARATION FOR JUDICIAL REVIEW OF THESE MATTERS AT ALL LEVELS OF JURISDICTIONAL STATURE" filed herein on December 14, 1981 by pro se petitioner Henry J. Kalita.

3) "APPLICATION FOR STAY OF ADMINISTRATIVE ORDER PENDING REVIEW PURSUANT TO 5 USC 705" and ex hibits in support thereof filed on December 14, 1981 by pro se Petitioner Henry J. Kalita.

ON consideration thereof,

IT IS ORDERED that the petition for writ of habeas corpus is hereby DENIED.

IT IS FURTHER ORDERED that all of the forms of relief requested by petitioner are hereby Denied.

APPENDIX "B"

No. 81-2958

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago Illinois, 60604

FEBURARY 2, 1982.

BEFORE

Hon. Walter J. Cummings, Chief Judge

Hon. Wilbur F. Pell, Jr., Circuit Judge

Hon. Richard D. Cudhay, Circuit Judge.

| | | |
|---|---|---|
| Henry J. Kalita, Petitioner, NO. 81-2958 | vs. | ) Petition for ) Review of an )Order of the ) Internal Reve- |
| Internal revenue Service, Respondent. | | ) nue Service. ) ) |

On consideration of the"PETITION FOR CLARIFICATION OF ORDER OF DECEMBER 23, 1981 TO RECONSIDER ITS DECISION BASED ON SOME OF THE FOLLOWING REASONS: AND FOR WRITTEN FINDING OF FACTS AND CONCLUSION OF LAW FOR APPEAL" filed herein on January 8, 1982, by pro se petitioner, construing said motion to reconsider this Court's order of December 23, 1981. denying all the forms of relief requested by petitioner,

IT IS ORDERED THAT said motion is hereby DENIED. This order concludes the Court's CONsideration of this petition for review.

IT IS FURTHER ORDERED that this petition is hereby DISMISSED.